

ALABAMA DEPARTMENT OF  
ENVIRONMENTAL MANAGEMENT

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IN THE MATTER OF

HERITAGE ASSET DEVELOPMENT GROUP LLC  
MOUNTAIN RIDGE SUBDIVISION  
CLAY, T19S, R3W, S13  
JEFFERSON COUNTY, ALABAMA  
NPDES ALR16B096

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FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, Ala. Code §§ 22-22A-1 to 22-22A-16 (2006 Rplc. Vol.), the Alabama Water Pollution Control Act (hereinafter “AWPCA”), Ala. Code §§ 22-22-1 to 22-22-14 (2006 Rplc. Vol.), the Alabama Department of Environmental Management (hereinafter “Department” or “ADEM”) Administrative Code of Regulations (hereinafter “ADEM Admin. Code r.”) promulgated pursuant thereto, and § 402 of the Federal Water Pollution Control Act, 33 U.S.C. § 1342, the Department makes the following FINDINGS:

1. Heritage Asset Development Group, LLC (hereinafter “Operator”), is an Alabama developer who is constructing a residential subdivision named Mountain Ridge Subdivision (hereinafter “Facility”) located in T19S, R3W, S13 on Old Springville Road, in Clay, Jefferson County, Alabama. David Gulledge is the managing partner responsible for the Operator’s compliance with State and Federal environmental laws and regulations. Sediment and other pollutants in stormwater runoff from the Facility have the potential to discharge and/or have discharged to an unnamed tributary to Turkey Creek, a water of the State, classified for Fish & Wildlife.

2. The following acronyms are used in this Order and, when used, shall have the meaning of the name or title referenced below.

BMPs	Best Management Practices
CBMPP	Construction Best Management Practices Plan
NOR	Notice of Registration
NOV	Notice of Violation

NPDES	National Pollutant Discharge Elimination System
QCI	ADEM-recognized Qualified Credentialed Inspector
QCP	ADEM-recognized Qualified Credentialed Professional
SPCC	Spill Prevention Control & Countermeasures
UT	Unnamed Tributary
WL	Warning Letter

3. The Department is a duly constituted department of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rplc. Vol.).

4. Pursuant to ADEM Admin. Code rs. 335-6-12-.05(1) and 335-6-12-.11(1), the Operator is required to submit to the Department an NOR in order to register for and obtain NPDES coverage prior to commencing and/or continuing regulated disturbance activities.

5. On August 21, 2006, the Operator submitted to the Department an NOR requesting NPDES coverage under ADEM Admin. Code ch. 335-6-12 for regulated disturbance activities and discharges of treated stormwater from the facility. The Department granted registration ALR16B096 to the Operator on August 21, 2006. Registration ALR16B096 expired on August 20, 2007.

6. On August 20, 2007, the Operator submitted to the Department an NOR requesting re-registration of NPDES coverage ALR16B096. The Department granted re-registration of ALR16B096 to the Operator on August 20, 2007. Registration ALR16B096 expired on August 20, 2008.

7. Pursuant to ADEM Admin. Code r. 335-6-12-.05(2), all NPDES construction sites/activities and non-coal mining sites/activities less than five acres in size in Alabama are required to fully implement and regularly maintain effective BMPs to the maximum extent practicable, and in accordance with the Operator's CBMPP that has been prepared by a QCP.

8. During an inspections of the Facility on February 27, 2007; July 3, 2007; May 14, 2008; and July 22, 2008, the Department documented that the Operator had not properly implemented and maintained effective BMPs resulting in discharges of sediment and other pollutants in stormwater runoff to an UT to Turkey Creek.

9. On March 7, 2007, a WL was sent to the Operator by the Department as a result of the February 27, 2007, inspection. The WL notified the Operator of deficiencies documented at the Facility, and requested the Operator to submit, within seven days of receipt of the WL, a report detailing immediate and long-term corrective actions certified by a QCP. As of September 18, 2008, the requested information had not been submitted.

10. The March 7, 2007, WL also requested the Operator to submit, within fifteen days of receipt of the WL, a compliance schedule and a copy of the CBMPP for the Facility prepared by a QCP with dates of corrective measures to be implemented. The requested information has not been submitted to the Department.

11. The March, 7, 2007, WL also requested the Operator to submit, within thirty days of receipt of the WL, a follow-up response signed and certified by a QCP. The QCP response and certification has not been received.

12. Pursuant to ADEM Admin. Code r. 335-6-12-.35(10)(a), the Operator is required to determine the nature, amount, and impact of a non-complying discharge, and remove, to the maximum extent practical, sediment and other pollutants deposited offsite or in any State water.

13. During the July 3, 2007; May 14, 2008; and July 22, 2008, inspections by the Department, significant accumulations of sediment resulting from discharges at the Facility were observed offsite and in an UT to Turkey Creek.

14. On July 13, 2007, a NOV was sent to the Operator by the Department as a result of the July 3, 2007, inspection. The NOV notified the Operator of deficiencies documented at the Facility, and requested the Operator to submit, within seven days of receipt of the NOV, a report detailing immediate and long-term corrective actions certified by a QCP. The requested information has not been submitted.

15. The July 13, 2007, NOV also requested the Operator to submit, within seventeen days of receipt of the NOV, a compliance schedule, an updated SPCC Plan, and a copy of the

CBMPP for the Facility prepared by a QCP with dates of corrective measures to be implemented. The requested information has not been submitted to the Department.

16. The July 13, 2007, NOV also requested that the Operator submit, within twenty-one days, a QCP certification that all deficiencies had been corrected at the Facility. The QCP certification has not been received.

17. On October 31, 2007, January 4, 2008, and February 12, 2008, the Department conducted a compliance assistance assessment of the Facility. During the site visits, the site was walked and areas of concern were discussed.

18. Pursuant to Ala. Code § 22-22A-5(18)c. (2006 Rplc. Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violations, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violations upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not be less than \$100 or exceed \$25,000 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000. Each day such violation continues shall constitute a separate violation. In arriving at this civil penalty, the Department has considered the following:

A. SERIOUSNESS OF THE VIOLATIONS: Excessive sediment was allowed to be discharged from the Facility by the Operator. The Operator did not ensure that effective BMPs were fully implemented and maintained resulting in the discharge of pollutants that could otherwise have been prevented and/or minimized. While the noted violations caused significant harm, the noted violations did not appear to cause irreparable harm to the environment. There is no evidence that the noted violations were a threat to the health or safety of the public.

B. THE STANDARD OF CARE: The Operator did not implement and fully maintain effective BMPs at the Facility. The Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. ECONOMIC BENEFIT WHICH DELAYED COMPLIANCE MAY HAVE CONFERRED: The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Operator by the Operator's failure to comply with applicable regulatory requirements and delayed response to the noted violations.

D. EFFORTS TO MINIMIZE OR MITIGATE THE EFFECTS OF THE VIOLATIONS UPON THE ENVIRONMENT: The Operator took little or no action to minimize or mitigate the effects of the noted violations upon the environment until required to do so by the Department. There are no known environmental effects as a result of the alleged violations.

E. HISTORY OF PREVIOUS VIOLATIONS: The Operator has a history of previous violations as described in the Findings.

F. THE ABILITY TO PAY: The Operator has not alleged an inability to pay the civil penalty.

G. OTHER FACTORS: Generally, the violations fell into four broad categories: 1) failure to maintain registration coverage, 2) Failure to respond to enforcement, 3) inadequate BMP implementation/maintenance/effectiveness, and 4) sediment accumulation/deposition offsite. Each of these categories have historically resulted in penalty amounts of 1) \$100.00 to \$10,000.00, 2) \$100.00 to \$25,000.00, 3) \$100.00 to \$5,000.00 and 4) \$100.00 to \$10,000.00, respectively.

#### ORDER

Based on the foregoing FINDINGS and pursuant to Ala. Code §§ 22-22A-10, 22-22A-5(12), 22-22A-5(18), and 22-22-9(i) (2006 Rplc. Vol.), it is hereby ORDERED:

A. That, within forty-five days of receipt of this Order, the Operator shall pay to the Department a civil penalty in the amount of \$20,100.00 for the violations cited herein. Said penalty shall be made payable to the Alabama Department of Environmental Management by certified or cashier's check and shall be remitted to:

Office of General Counsel  
Alabama Department of Environmental Management  
PO Box 301463  
Montgomery, Alabama 36130-1463

B. That, immediately upon receipt of this Order and continuing thereafter, the Operator shall fully implement and maintain temporary BMPs to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater leaving the Facility, prevent noncompliant and/or unpermitted discharges of pollutants to waters of the State, and ensure full compliance with the requirements of ADEM Admin. Code ch. 335-6-12.

C. That the Operator shall, immediately upon receipt of this Order and continuing thereafter, ensure immediate and future compliance with the AWPCA, applicable ADEM regulations, and all NPDES registration limitations, terms, and conditions for all ADEM NPDES regulated sites/facilities disturbed, operated, owned, and/or controlled by the Operator or responsible officials of the Operator.

D. That, unless relieved of this requirement in writing by the Department:

1. all inspections/evaluations shall be performed by a QCP/QCI;
2. BMP implementation and maintenance, and other corrective/remediation activities, shall be performed under the direct supervision of a QCP, and shall be certified by QCP;
3. all applications, plans, and information shall be certified by a QCP;
4. all submittals to the Department shall comply with applicable ADEM regulations and shall be signed by the Operator and certified by a QCP; and
5. all applications, plans, reports, and other submittals to the Department shall indicate who prepared the submittal, who conducted and/or supervised the inspection/work including his or her QCP/QCI designation, how the inspection/work was conducted, and the results of the inspection/work.

Within seven days of the receipt of any written comments from the Department, the Operator shall modify any application, plan, information, report, or other submittal, or submit additional

information/clarification to the Department to address any comments made by the Department in writing.

E. That, within five days of receipt of this Order, the Operator shall have a comprehensive inspection performed of the Facility, offsite conveyances, and affected State waters.

F. That, within ten days of receipt of this Order, the Operator shall submit to the Department a CBMPP detailing effective BMPs to be implemented to prevent/minimize to the maximum extent practicable sediment and other pollutants in stormwater leaving the Facility, and ensure full compliance with the requirements of ADEM Admin. Code ch. 335-6-12.

G. That, within ten days of receipt of this Order, the Operator shall submit to the Department a detailed plan for the remediation and/or removal of any sediment and other pollutants from the Facility deposited offsite and in State waters.

H. That, within twenty days of receipt of this Order, the Operator shall implement effective BMPs, implement all plans required by this Order, and correct all deficiencies at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

I. That, within twenty-five days of receipt of this Order, the Operator shall submit to the Department a certification that effective BMPs have been implemented, all deficiencies have been corrected, and full compliance with the requirements of ADEM Admin. Code ch. 335-6-12 has been achieved at the Facility, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

J. That, within thirty days of receipt of this Order, the Operator shall submit to the Department a written report detailing the results of comprehensive inspections of all other ADEM NPDES regulated facilities/sites owned, operated, controlled, registered, permitted or required to be registered/permitted by the Operator (hereinafter "Sites"), offsite conveyances, and affected State waters.

K. That, within thirty-five days of receipt of this Order, the Operator shall submit to the Department complete registrations for any Sites requiring NPDES coverage or modified

registrations for Sites needing updated/modified NPDES coverage, including the required fee, and a detailed plan, if needed, for implementation and maintenance of effective BMPs and correction of any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

L. That, within fifty days of receipt of this Order, the Operator shall, if needed, implement effective BMPs and correct any deficiencies noted in the comprehensive inspections at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

M. That, within fifty-five days of receipt of this Order, the Operator shall submit to the Department a certification for each of the Sites subject to this Order that effective BMPs have been implemented, any deficiencies have been corrected, complete registrations have been submitted to the Department for any Sites requiring NPDES coverage, and that full compliance with the requirements of ADEM Admin. Code ch. 335-6-12 has been achieved at the Sites, offsite conveyances, and affected State waters, including sediment removal/remediation in a manner acceptable to the Department.

N. Should any provision of this Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law and, therefore, unenforceable, the remaining provisions herein shall remain in full force and effect.

O. Except as otherwise set forth herein, this Order is not and shall not be interpreted to be a permit or modification of an existing permit under Federal, State or local law, and shall not be construed to waive or relieve the Operator of the Operator's obligations to comply in the future with any permit coverage.

P. That the issuance of this Administrative Order does not preclude the Department from seeking civil penalties, criminal fines or other appropriate sanctions or relief against the Operator for the violations cited herein.



Q. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Operator for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

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Onis "Trey" Glenn, III, Director  
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